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15 [Additional counsel listed on last page]

16 Attorneys for Plaintiff Joy Nwabueze and
 17 the putative class

18 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

19 JOY NWABUEZE, individually and on
 20 behalf of a class of similarly situated
 individuals,

21 Plaintiff,

22 vs.

23 AT&T INC., a Delaware corporation;
 PACIFIC BELL TELEPHONE
 24 COMPANY d/b/a AT&T CALIFORNIA, a
 California corporation; AT&T SERVICES,
 25 INC., a Delaware corporation; AT&T
 OPERATIONS, INC., a Delaware
 26 corporation; and DOES 1 through 21,

27 Defendants.

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Attorneys for Defendants

Case No. CV 09-1529 SI

**[PROPOSED] ORDER GRANTING
 PRELIMINARY APPROVAL OF CLASS
 ACTION SETTLEMENT**

Courtroom: 10
 Judge: Hon. Susan Illston

601872066

1 Plaintiff Joy Nwabueze, individually and in her representative capacity ("Plaintiff" or
2 "Class Representative"), and defendants Pacific Bell Telephone Company d/b/a AT&T
3 California, AT&T Operations, Inc. and AT&T Services, Inc. on its own behalf and as agent for
4 Southwestern Bell Telephone Company d/b/a AT&T Arkansas, AT&T Kansas, AT&T Missouri,
5 AT&T Oklahoma and AT&T Texas; Pacific Bell Telephone Company d/b/a AT&T California;
6 Nevada Bell Telephone Company d/b/a AT&T Nevada; Illinois Bell Telephone Company d/b/a
7 AT&T Illinois; Indiana Bell Telephone Company, Incorporated d/b/a AT&T Indiana; Michigan
8 Bell Telephone Company d/b/a AT&T Michigan; The Ohio Bell Telephone Company d/b/a
9 AT&T Ohio; Wisconsin Bell, Inc. d/b/a AT&T Wisconsin; The Southern New England
10 Telephone Company d/b/a AT&T Connecticut; and Bell South Telecommunications, Inc. d/b/a
11 AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Louisiana, AT&T Kentucky, AT&T
12 Mississippi, AT&T North Carolina, AT&T South Carolina, and AT&T Tennessee (collectively,
13 "AT&T" or "Defendants" and collectively with Plaintiff the "Parties"), have reached a proposed
14 settlement of the above-captioned Action (the "Proposed Settlement"). Plaintiffs have moved the
15 Court for preliminary approval of the Proposed Settlement on the terms and conditions set forth in
16 the Settlement Stipulation and Agreement first dated December 28, 2012 and the attached
17 exhibits ("Settlement Agreement").

18 The Court, having reviewed the motion, the Proposed Settlement and accompanying
19 documents, the arguments of counsel, and the records on file in this action, finds that preliminary
20 approval of the Proposed Settlement should be, and hereby is, GRANTED.

21 NOW, THEREFORE, THE COURT HEREBY FINDS AND HEREBY ORDERS THAT:

22 1. The Settlement Agreement attached to Plaintiffs' Motion for Preliminary Approval
23 as Exhibit "A" is hereby incorporated in this Order. All capitalized terms used herein shall have
24 the meanings defined in the Settlement Agreement.

25 2. The Proposed Settlement is preliminarily approved, subject to a final approval
26 hearing of the Proposed Settlement (the "Fairness Hearing").

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1 3. Based upon the claims and allegations as currently asserted in the operative
2 complaint in this Action, the Court finds that Article III standing has been established.

3 4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following
4 Settlement Class is certified for settlement purposes only:

5 All present and former AT&T ILEC landline telephone customers in the United
6 States who, at any time from January 1, 2005 through January 14, 2013, had a
7 Third-Party charge placed on the customer's AT&T ILEC landline telephone bill
8 through a Clearinghouse. Excluded from the Settlement Class are any judicial
officer to whom the Action is assigned and the U.S. government and any State
government or instrumentality thereof.

9 5. With respect to the above-referenced Settlement Class, the Court finds for
10 purposes of settlement only that the prerequisites to a class action under Fed. R. Civ. P. 23(a) are
11 satisfied for settlement purposes in that: (1) members of the Settlement Class are too numerous to
12 be joined individually; (2) there are questions of law or fact common to the Settlement Class; (3)
13 the claims or defenses of the Class Representative is typical of the claims or defenses of the
14 Settlement Class; and (4) the Class Representatives will fairly and adequately protect the interests
15 of the Settlement Class.

16 6. With respect to the above-referenced Settlement Class, the Court further finds that
17 the requirements of Rule 23(b)(3) have been satisfied for settlement purposes only in that: (1)
18 questions of law or fact common to members of the Settlement Class predominate over any
19 questions affecting only individual members; and (2) a class action is superior to other available
20 methods for the fair and efficient adjudication of the controversy.

21 7. With respect to the above-referenced Settlement Class, the Court hereby appoints
22 Joy Nwabueze and Amanda Terry as Class Representatives for the Settlement Class. For
23 purposes of settlement only, the Court hereby appoints John G. Jacobs, Bryan G. Kolton, David
24 Schachman, Jeffrey F. Keller, Jahan C. Sagafi, Michael Caddell and Cynthia Chapman as Class
25 Counsel for the Settlement Class.

26 8. The Court finds that the Proposed Settlement appears to be fair, reasonable, and in
27 the best interests of the Class. The Court further finds that there is sufficient basis for notifying
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1 class members of the Proposed Settlement, and for enjoining class members from proceeding in
2 any other action pending the conclusion of the Fairness Hearing as further ordered below.

3 9. Should the Proposed Settlement not receive the Court's final approval, should final
4 approval be reversed on appeal, or should the Proposed Settlement be terminated or otherwise fail
5 to become effective, the Court's grant of class certification for settlement purposes and findings
6 shall be vacated, and the Class Representative and the Settlement Class would bear the full
7 burden of establishing the propriety of class certification. In such case, neither the certification of
8 the Settlement Class for settlement purposes, nor any other act relating to the negotiation or
9 execution of the Settlement Agreement shall be referred to, used as evidence, or considered as a
10 factor in connection with any class certification issue(s).

11 10. The Court finds that the parties entered into the Settlement Agreement in good
12 faith, following arms-length negotiation, including multiple days of mediation conducted by the
13 Honorable Eugene F. Lynch (ret.) and the Honorable Wayne D. Brazil (ret.).

14 11. The Court hereby appoints The Garden City Group, Inc ("GCG") as the Settlement
15 Administrator. The Settlement Administrator shall administer the Proposed Settlement in
16 accordance with the terms set forth in the Settlement Agreement and perform the functions set
17 forth therein.

18 12. The Court finds that the scope and process for notice as set forth in the Notice Plan
19 in Section VII of the Settlement Agreement, including the form and content of the notices
20 attached as Exhibits 4, 6, 7, 8, 9, and 10 of the Settlement Agreement, provides the best notice
21 practicable under the circumstances and constitutes valid, due and sufficient notice to all Persons
22 within the Settlement Class of: (i) the pendency and nature of the Action; (ii) certification of the
23 Settlement Class; (iii) the claims, issues and defenses in the Action; (iv) that a Settlement Class
24 Member may enter an appearance through an attorney; (v) the terms of the Settlement
25 Agreement; (vi) the right of Persons within the Settlement Class to exclude themselves from the
26 Settlement Class and the time and manner for requesting exclusion; (vii) the binding effect of any
27 judgment, whether favorable or not, on Persons within the Settlement Class who do not request to
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1 be excluded; (viii) the Final Approval Hearing; and (ix) the right of Persons within the Settlement
 2 Class who do not request to be excluded to object to the Proposed Settlement, the award of
 3 attorneys' fees, costs and expenses and/or payment of incentive awards, consistent with the
 4 requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any
 5 other applicable law. The Parties, by agreement, may revise the Notices, Claim Forms and other
 6 exhibits to the Settlement Agreement in ways that are not material, or in ways that are appropriate
 7 to update those documents for purposes of accuracy.

8 (a) Pursuant to the Notice Plan:

9 (i) The Notice Commencement Date shall be April 1, 2013:

10 (A) Beginning no later than thirty (30) days after the Notice
 11 Commencement Date, for two consecutive months, each billing envelope that is sent to an AT&T
 12 ILEC Customer ("billing envelope") shall have printed on it the words "Important Notice
 13 regarding Third-Party Charges, including how to seek a refund if unauthorized" .25 to .50 inches
 14 above the address window on the front of the envelope in blue or orange lettering with a 13 pt.
 15 Clearview font; and for customers who are sent bills in electronic format AT&T shall provide this
 16 same statement on the first page of each electronic bill ("ebill") that is transmitted. AT&T shall
 17 include enclosures in these billing envelopes and a link on these ebills as follows:

18 (1) All Current Customers will have included an
 19 informational bulletin about Third-Party billing which shall include a statement of AT&T end-
 20 user rights ("Informational Bulletin").

21 (2) In addition to the Informational Bulletin, all Settlement
 22 Class Members who can be identified through the Settlement Class Member List Process, and
 23 who are Current Customers, will also have included a Notice of Settlement (in the form and
 24 substance of Exhibit 8 to the Settlement Agreement), Billing Summary Request form (in the form
 25 and substance of Exhibit 1 to the Settlement Agreement), and Claim Form (in the form and
 26 substance of Exhibit 2 to the Settlement Agreement) for each separately billed Billing Telephone

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[PROPOSED] PRELIMINARY APPROVAL ORDER, CASE NO. CV 09-1529 SI

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Number ("BTN") as to which the Class Member is receiving notice as a Current Customer. The Notice of Settlement shall be on paper of a different color from any other paper in the envelope.

(ii) Beginning no later than the Notice Commencement Date and ending no later than forty-five (45) days later, the Settlement Administrator shall mail a Postcard Notice to all Former Customers for each former BTN (in the form and substance of Exhibit 9 to the Settlement Agreement) by United States mail, postage prepaid, to the Former Customer's last known mailing address, as available. The Settlement Administrator shall update the postal mailing addresses as appropriate using the National Change of Address database maintained by the United States Postal Service.

(iii) Beginning no later than the Notice Commencement Date and ending no later than ninety (90) days later, the Settlement Administrator shall send a separate Email Notice to all identified in the Settlement Class Member List Process and for whom email addresses have been identified through an electronic search of reasonably available AT&T billing data. The Email Notice will be in the form of Exhibit 9 to the Settlement Agreement and will provide the Notice of Settlement (Exhibit 8), Billing Summary Request Form (Exhibit 1) and Claim Form (Exhibit 2).

(iv) AT&T shall place a ½ page Legal Notice (in the form and substance of Exhibit 10 to the Settlement Agreement) to be published nationwide in *USA Today* on two (2) separate dates. In addition to the publications in *USA Today*, AT&T shall place 1/4 page Legal Notices (in the same form and substance as Exhibit 10 to the Settlement Agreement) in Parade Magazine regional publications in the states of Indiana, Ohio, Michigan, Wisconsin, Illinois on two (2) separate dates. The first publication shall be placed within one week after the Notice Commencement Date and the final publication shall occur no later than ninety (90) days thereafter.

(v) Within thirty days of the entry of this Order, the Settlement Administrator shall open an Interim Settlement Website (substantially in the form of Exhibit 7 to the Settlement Agreement) that will advise visitors that a Settlement has been reached subject to

1 final approval of the Court and inform the visitor that the Final Settlement Website will not be
 2 fully populated and operational until April 1, 2013, and instruct the viewer to revisit at that time
 3 for full details of the Proposed Settlement.

4 (vi) Beginning on April 1, 2013 and continuing until sixty (60) days after
 5 the Claims Payment Deadline (unless the Agreement is terminated in accordance with its terms),
 6 the Settlement Administrator or AT&T shall do the following:

7 (A) The Settlement Administrator shall establish and make
 8 operational the Final Settlement Website (Exhibit 6 to the Settlement Agreement), which website
 9 shall be operated, populated and maintained by the Settlement Administrator as described in the
 10 Settlement Agreement and supported by Google Adwords.

11 (B) Concurrent with the time that the Final Settlement Website is
 12 operational, AT&T will include a link to the Final Settlement Website on each page of its own
 13 website that addresses landline cramming, along with a notice that says, "If you paid for a third
 14 party charge on your AT&T bill that you did not authorize between January 1, 2005 and January
 15 14, 2013, visit [www.\[xxx\].com](http://www.[xxx].com) or call 1-800-xxx-xxxx to learn about your possible right to a
 16 refund under a Class Action Settlement."

17 (b) AT&T and/or the Settlement Administrator shall file a declaration with the
 18 Court attesting that: (a) AT&T complied with the Settlement Class Member List Process; (b) the
 19 Notice of Settlement was sent in accordance with this Order; (c) the Postcard Notice was sent in
 20 accordance with this Order; (d) the Email Notice was sent in accordance with this Order;
 21 (e) Legal Notice was published in accordance with this Order; and (f) the Interim and Final
 22 Settlement Websites were made operational and maintained in accordance with this Order. Such
 23 declarations shall be provided to Class Counsel and Defendants' Counsel and filed with the Court
 24 no later than August 29, 2013.

25 13. Any Person within the Settlement Class who wishes to be excluded from the
 26 Settlement Class must submit a timely and valid Request for Exclusion to the Settlement
 27 Administrator, pursuant to the instructions set forth in the Settlement Class Notice, Postcard

1 Notice, and Legal Notice, postmarked no later than September 2, 2013. To be valid, a Request
2 for Exclusion must satisfy the following requirements: (1) it must contain the name, address and
3 telephone number of the Person submitting the Request for Exclusion; (2) it must be signed either
4 (i) personally, if the Person within the Settlement Class is an individual, or (ii) by an owner or
5 authorized officer, if the Person within the Settlement Class is a business entity; and (3) it must
6 state that the Person wishes to be excluded from the Action.

7 (a) Any Person within the Settlement Class who submits a timely and valid
8 Request for Exclusion shall not be bound by the Settlement Agreement, shall not be entitled to
9 share in the benefits of the Proposed Settlement, and shall not be bound by the Final Order and
10 Judgment.

11 (b) Any Person within the Settlement Class who does not submit a timely and
12 valid Request for Exclusion shall be deemed a Settlement Class Member and, upon the Effective
13 Date, shall be bound by the terms of the Settlement Agreement and the Final Order and
14 Judgment, whether or not such Settlement Class Member submits a Claim. All Settlement Class
15 Members shall be bound by all determinations and judgments in the Action concerning the
16 settlement, whether favorable or unfavorable to the Settlement Class.

17 (c) The Settlement Administrator shall provide copies of all Requests for
18 Exclusion to Class Counsel and Defendants' Counsel as soon as practicable after receipt of each
19 Request for Exclusion. No later than October 2, 2013, the Settlement Administrator shall deliver
20 to Class Counsel, who shall file it with the Court, and serve on Defendants' Counsel, a report
21 stating the total number of persons who have submitted timely and valid Requests for Exclusion
22 from the Settlement Class, and the names, addresses and telephone numbers of all such Persons.
23 Such Persons will not be entitled to object to the Proposed Settlement.

24 (d) Settlement Class Members who qualify for and wish to submit a claim for
25 any benefit under the settlement as to which a claim is required shall do so in accordance with the
26 requirements and procedures of the Settlement Agreement. All Settlement Class Members who
27 qualify for any benefit under the settlement as to which a claim is required but fail to submit a
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1 claim therefor in accordance with the requirements and procedures of the Settlement Agreement
2 shall be forever barred from receiving any such benefit, but will in all other respects be subject to
3 and bound by the provision of the Settlement Agreement, the Release contained therein, and the
4 Final Order and Judgment.

5 14. A Final Approval Hearing shall be held before this Court at 9:00 a.m. on
6 November 1, 2013, in Courtroom 10 on the 19th Floor of the United States District Court for the
7 Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California
8 94102, to, *inter alia*: (i) determine whether to grant final approval to the Settlement Agreement;
9 (ii) consider any timely objections to this Settlement and the Parties' responses to such
10 objections; (iii) determine whether judgment should be entered dismissing the Action with
11 prejudice; and (iv) rule on Class Counsel's application for attorneys' fees, costs and expenses and
12 for incentive awards to the Class Representatives. The Final Approval Hearing may, from time to
13 time and without further notice to the Settlement Class, be continued by order of the Court. The
14 Parties may ask the Court to reschedule the Final Approval Hearing depending on the timing of
15 the occurrence of the Notice Completion Date.

16 15. Any Settlement Class Member who wishes to object to the proposed Settlement,
17 the applications for attorneys' fees, costs and expenses or the request for the payment of incentive
18 awards must file with the Court, and serve upon Class Counsel and Defendants' Counsel, a
19 written objection no later than September 2, 2013.

20 (a) Any Settlement Class Member who intends to object to this Agreement
21 must include with the objection his/her name and address and telephone number and all
22 arguments, citations, and evidence supporting the objection. An objecting Settlement Class
23 Member must state, in writing, all objections and the basis for any such objection(s), and provide
24 a statement as to whether the Objector intends to appear at the Final Approval Hearing, either
25 with or without counsel. Objections not filed and served in accordance with this Order shall not
26 be received or considered by the Court. Any Settlement Class Member who fails to timely file
27 and serve a written objection in accordance with this Order shall be deemed to have waived, and
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1 shall be forever foreclosed from raising, any objection to the Proposed Settlement, to the fairness,
2 reasonableness, or adequacy of the Proposed Settlement, to the payment of attorneys' fees, costs,
3 and expenses, the payment of incentive awards, or to the Final Approval Order or the right to
4 appeal same.

5 (b) No objector shall be allowed to appeal the overruling of any objection or
6 the final approval of this settlement unless the objector or his or her or its counsel has appeared in
7 person at the Final Approval Hearing or in advance received for good cause shown the
8 dispensation from the Court from appearing at the Final Approval Hearing. Within five (5) days
9 of receipt of a timely filed objection, Class Counsel shall send a copy of this provision of the
10 Preliminary Approval Order to such objector at the address set forth in the objection.

11 (c) Class Counsel should be prepared at the Final Approval Hearing to respond
12 to objections filed by Settlement Class Members, and to provide other information, as
13 appropriate, bearing on whether the Proposed Settlement should be approved.

14 16. It shall be the responsibility of Class Counsel and the Settlement Administrator to
15 respond to all inquiries from Settlement Class Members.

16 17. All briefs, memoranda and papers in response to objections and in support of final
17 approval of the settlement shall be filed no later than fourteen (14) days before the Final Approval
18 Hearing.

19 18. With the exception of such proceedings as are necessary to implement, effectuate
20 and grant final approval to the proposed Settlement, all proceedings in this Action are stayed until
21 further order of this Court.

22 19. All Settlement Class Members are hereby enjoined from commencing or
23 continuing to prosecute any action or proceeding in any court or tribunal asserting any of the
24 Released Claims, either directly, representatively, derivatively or in any other capacity, against
25 any of the Released Parties, pending the determination in the Final Approval Hearing of whether
26 the Proposed Settlement should receive final approval. Such injunction shall remain in force until
27 final approval or until such time as the parties notify the Court that the Proposed Settlement has

1 been terminated. This injunction is necessary to protect and effectuate the Proposed Settlement,
 2 this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the
 3 Proposed Settlement and to enter final judgment when appropriate, and is in aid of the Court's
 4 jurisdiction and to protect its judgments.

5 20. To the extent AT&T, GCG and Class Counsel provide and/or exchange
 6 information relating to any Person on the Settlement Class List as required under the terms of the
 7 Settlement Agreement, AT&T, GCG and Class Counsel shall be authorized to provide and/or
 8 exchange such information notwithstanding any limitations on use, or prohibitions on disclosure,
 9 which might otherwise apply to such information under 47 U.S.C. § 222, California Public
 10 Utilities Code § 2891, or any other applicable law. Nothing herein constitutes a ruling by the
 11 Court that such information is restricted by the foregoing provisions, but, rather, a determination
 12 that even if it is, disclosure as set forth herein is appropriate and consistent with the letter and the
 13 spirit of such provisions.

14 21. All information received pursuant to the preceding paragraph shall be kept
 15 confidential and used solely for the purpose of implementing the Settlement. Such information
 16 shall not be disclosed or used for any other purpose without the consent of the providing party or
 17 pursuant to an order of the Court.

18 22. Service of all papers on counsel for the Parties shall be made as follows:

19 (a) Class Counsel: (i) John G. Jacobs and Bryan G. Kolton, Jacobs Kolton,
 20 Chartered, 55 West Monroe Street, Suite 2970, Chicago, IL 60603; (ii) Jahan C. Sagafi, Lieff
 21 Cabraser Heimann & Bernstein, LLP, 275 Battery Street, 29th Floor, San Francisco, California
 22 9411-3339; (iii) Jeffrey F. Keller, Keller Grover, LLP, 1965 Market Street, San Francisco,
 23 California 94103; (iv) David Schachman, David Schachman & Associates, P.C., 55 West
 24 Monroe Street, Suite 2970, Chicago, IL 60603; and (v) Michael Caddell and Cynthia B.
 25 Chapman, Caddell & Chapman, 1331 Lamar, Suite 1070, Houston, Texas 77010.

26 (b) Defendants' Counsel: Douglas R. Tribble, Pillsbury Winthrop Shaw
 27 Pittman LLP, 501 West Broadway, Suite 1100, San Diego, California 92101-3575.

1 23. Neither the Settlement Agreement nor the settlement contained therein, nor any act
2 performed or document executed pursuant to or in furtherance of the Settlement Agreement or the
3 settlement: (a) is or may be deemed to be, or may be used as an admission of, or evidence of, the
4 validity or lack thereof of any Released Claim, or of any wrongdoing or liability of AT&T; or
5 (b) is or may be deemed to be, or may be used as an admission of, or evidence of, any fault or
6 omission of AT&T, in any civil, criminal, or administrative proceeding in any court,
7 administrative agency, or other tribunal.

8 24. If the Effective Date does not occur, or if the Settlement Agreement is terminated
9 for any reason, then: (a) the Settlement Agreement shall become null and void and shall have no
10 further force or effect; (b) the Settlement Agreement, the Parties' acceptance of its terms, and all
11 related negotiations, statements, documents and court proceedings shall be without prejudice to
12 the rights of the Parties, which shall be restored to their respective status in the Action
13 immediately prior to the execution of the Settlement Agreement; and (c) this Preliminary
14 Approval Order, and all other orders entered pursuant to the Settlement Agreement, shall be
15 vacated, *nunc pro tunc* and *ab initio*, and the Action shall proceed as if the Settlement Agreement
16 had neither been entered into nor filed with the Court nor any such Orders had been issued,
17 without prejudice to any party's position on the issue of class certification or any other issue, nor
18 shall any such filings or Orders be deemed relevant or supportive on the issue of Judicial Estoppel
19 or used in any way to limit the ability to oppose Class Certification on any grounds otherwise
20 available .

21 25. The Court reserves the right to adjourn the date of the Settlement Hearing, or
22 extend any of the deadlines set forth in this Order, without further notice to the Settlement Class,
23 and retains jurisdiction to consider all further applications arising out of or connected with the
24 proposed settlement. The Court may approve the settlement, with such modifications as may be
25 agreed to by the Parties, if appropriate, without further notice to the Settlement Class.

1 26. The Court retains jurisdiction over this Action to consider all further matters
2 arising out of or connected with the Proposed Settlement.

3 **IT IS ORDERED.**

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5 Dated: V/16/13

SJ
The Honorable Susan Illston

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